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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/690,195 | 10/21/2003 | James Clifton Curry | CURRY / 02US | 3677 |
| 26875 | 7590 | 09/16/2005 | EXAMINER | |
| WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202 | | | HOEY, ALISSA L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3765 | |

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,195

Applicant(s)

CURRY, JAMES CLIFTON

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-18 in the reply filed on 07/18/05 is acknowledged.
2. This is in response to election restriction response received on 07/18/05. Claims 19-21 are withdrawn as being drawn to a non-elected method of wearing a garment with instructions. Claims 1-18 are examined below.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claims 7 and 8 needs to be illustrated or canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 6 objected to because of the following informalities: should "al" read "all"? Appropriate correction is required.
5. Claim 7 is objected to because of the following informalities: should "and" in lines 4 and 6 read "or"? Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 14 contain the trademark/trade name Velcro. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fasteners and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-7, 9 and 12-14 rejected under 35 U.S.C. 102(b) as being anticipated by Benjamin (US 5,697,102).

In regard to claim 1, Benjamin teaches a garment comprising a panel of fabric having a first half and a second half joined along a common foldline (figures 2 and 3). A first opening (30) formed proximate the foldline and at least one cooperating fastener (50) positioned on at least one of the first half and second half of the panels for securing the first half of the panel to the second half of the panel (figure 1 and 2).

In regard to claim 2, Benjamin teaches the fasteners comprising a male component and a female component (figures 2 and 3, identifier 50). The male component positioned on one of the first half and the second half of the panels and the female component positioned on the other of the first half and the second half of the panel (column 3, lines 17-23).

In regard to claim 3, Benjamin teaches the panel comprising a terry cloth material which is inherently cotton (column 2, lines 49-59).

In regard to claim 4, Benjamin teaches at least one fastener being a hook and loop fastener (column 3, lines 17-23).

In regard to claim 5, Benjamin teaches the first half and the second half including opposing longitudinal edges comprising one of the male and female components of the at least one fastener (column 3, lines 17-23).

In regard to claim 6, Benjamin teaches a plurality of fasteners wherein the opposing longitudinal edges of the first half is capable of comprising all of the male components or all of the female components of the plurality of fasteners (figures 2 and 3, identifier 50).

In regard to claim 7, Benjamin teaches each of the first half and the second half of the panels further comprising a transverse edge opposing the folding (figures 2 and 3). The transverse edge of the first half comprises one of the male components or the female components of the at least one fastener and the transverse edge of the second half comprises the other of the male or female components of the at least one fastener (figures 2-4).

In regard to claim 9, Benjamin teaches a hood attached to the panel proximate to the first opening (figure 4, identifier 40).

In regard to claim 12, Benjamin teaches a garment comprising a panel of fabric having a first half, a second half and a central opening therebetween (figures 2 and 3). The first half and the second half comprising opposing longitudinal edges and having a common foldline proximate the central opening (figures 2-4). A plurality of fasteners, each fastener comprising a male component and a female component, the male components are positioned proximate the longitudinal edges of one of the first half and the second half of the panel (figures 2 and 3). The female components positioned

proximate to the longitudinal edges of the other of the first half and the second half of the panel (Figures 2 and 3). The male components are adapted to attach to the female components for securing the first half of the panel to the second half of the panel (column 3, lines 17-23).

In regard to claim 13, Benjamin teaches the panel comprising a terry cloth material which is inherently cotton (column 2, lines 49-59).

In regard to claim 14, Benjamin teaches the fasteners selected from hook and loop fasteners (column 3, lines 17-23).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin.

Benjamin teaches a garment as described above in claim 12. However, Benjamin fails to teach the longitudinal edge of the first and second halves being about 45 inches long and the transverse edges being about 60 inches wide. Further, Benjamin fails to teach the plurality of fasteners comprises strips of about 36 inches, the strips having male and female fastener spaced about two inches apart.

With respect to the limitation that the transverse edges are 60 inches, the longitudinal edges are 45 inches long, the fastener strip is 36 inches long and the

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fasteners are spaced apart 2 inches. The specification contains no disclosure of either the critical nature of the claimed dimensions or any unexpected results arising therefrom, and that as such the dimensions are arbitrary and therefore obvious. Such unsupported cannot be a basis for patentability, since where patentability is said to be based upon particular dimensions or another variable in the claim, the applicant must show that the chosen dimensions are critical. In re Woodruff, 919 F. 2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for particular application based upon the size or the user and specific use of the garment article.

With respect to the fasteners being located on strips, it would have been obvious to an artisan having ordinary skill in the art to have provided the fasteners on fastener strips or just on the edges of the garment itself, because as long as fasteners are located on the longitudinal edges of the garment to secure around the user's body the fasteners being placed on a strip is not critical. The plurality of fasteners along the longitudinal edges matched up and fastened together correctly would prevent the garment from hanging unevenly the strips would not provide any additional assistance.

In regard to claim 18, Benjamin teaches the fasteners being snaps (column 3, lines 17-23).

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin in view of Ponstein (US 5,657,489).

Benjamin teaches a garment as described above in claim 1. However, Benjamin fails to teach the first opening comprising a lining.

Ponstein teaches a cape device with an elastic lined head opening (column 3, lines 40-50).

It would have been obvious to have provided the garment of Benjamin with the elastic lined head opening of Ponstein, since the garment of Benjamin provided with an elastic lined head opening would allow greater ease in donning and doffing the garment due to the stretchability of the opening from the elastic lining.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin in view of Dike (US 3,013,274).

Benjamin teaches a garment as described above in claim 1. However, Benjamin fails to teach a pair of second openings in at least one of the first or second halves of the garment.

Dike teaches a towel garment having a pair of second openings in at least one of the first or second halves of the garment (figures 1-3, identifier 12).

It would have been obvious to have provided the garment of Benjamin with the second pair of openings of Dike, since the garment of Benjamin provided with a second pair of openings would provide for pockets in the garment giving the user a place to store items when not needed.

13. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin in view of Dodd, Jr. (US D 365,193).

Benjamin teaches a garment as described above in claims 1 and 12. However, Benjamin fails to teach at least one image on one of the first or second half panels.

Dodd teaches a beach poncho having an image on the first half of the panels (see figures).

It would have been obvious to have provided the garment of Benjamin with the image of Dodd, since the garment of Benjamin provided with an image would provide a garment that is more aesthetically pleasing to the wearer and onlookers.

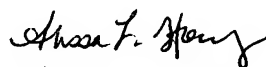
Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Parry, Griggs, Wampler, Terry, Goldstein, Legg, Rabedaux, Leadford, Klauber, Paula, Meserol, Wade, Curtis, Hogan, Niedermeyer, Love, Dodge, Ceron, Simmons and Reynolds are all cited to show closely related garment articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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